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8 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK**

9 MARILYN DANTON,

10 Plaintiff,

11 vs.

12 ST. FRANCIS 24 HOUR ANIMAL
13 HOSPITAL, P.C. a Washington professional
14 services corporation (UBI 602-029-072); and
DOES 1-10;

15 Defendants.

Case No.: 06-2-01172-8 (Wulle)

PLAINTIFF'S MOTIONS IN LIMINE

Hearing Date: Friday, July 20, 2007

Time: 1:30 p.m.

Judge John P. Wulle

16 **I. Relief Requested**

17 Marilyn Danton, through her attorney of record Adam P. Karp, seeks rulings on
18 evidentiary and substantive motions in limine, as well as a clarification for trial.

19 ***Evidentiary Motions in Limine***

20 Marilyn Danton moves the court before trial and before selection of the jury for an order
21 preventing the defendants or their attorneys or witnesses from introducing evidence, referring to,
22 interrogating concerning, or attempting to convey to the jury in any manner the following:

- 23 1. Communicating the alleged statement of Mr. Danton to Barbara Baker, "You just

24 PLAINTIFF'S MOTIONS IN LIMINE- 1

25 ANIMAL LAW OFFICES OF
ADAM P. KARP, ESQ.
114 W. Magnolia St., Ste. 425 • Bellingham, WA 98225
(360) 738-7273 • Facsimile: (360) 392-3936
adam@animal-lawyer.com

1 made me a fucking millionaire,” or any statement paraphrasing, suggesting, or
2 referencing the same type of comment.

- 3 2. Communicating any alleged physical assault by Mr. Danton on any employee of St.
4 Francis upon his and his wife’s return from out-of-state.
- 5 3. Other lawsuits, grievances, claims involving Ms. Danton or Mr. Danton.
- 6 4. Settlement negotiations or offers of compromise.
- 7 5. Alleged disparate financial status or poverty of defendant predicated on lack of
8 insurance coverage.
- 9 6. The nature of Mr. Karp’s practice, his affiliation or support of animal welfare, animal
10 rights, or animal causes generally, his website, his personal or professional life
11 generally.
- 12 7. The assertion that Moochie had a fair market or replacement value, or anything other
13 than intrinsic value.
- 14 8. Any reference to or suggestion that the parties have incurred attorney’s fees in
15 pursuing or defending this action.
- 16 9. The filing of this motion.

17 Ms. Danton reserves the right to raise by subsequent oral motion any other matter as it
18 may arise, including during the course of trial. She further moves the court for an order directing
19 Defendant’s counsel to carefully inform each witness called regarding the existence of this order
20 and the necessity of complying therewith.

21 *Substantive Motions in Limine*

22 On August 25, 2006, the parties brought motions for partial summary judgment on
23 various liability and damage theories. The Honorable John Wulle reserved ruling on:

- 24 (1) whether loss of use is an element of damages [*Order on Defs’ Motion to Dismiss*, ¶ 1;

25 PLAINTIFF’S MOTIONS IN LIMINE- 2

ANIMAL LAW OFFICES OF
ADAM P. KARP, ESQ.
114 W. Magnolia St., Ste. 425 • Bellingham, WA 98225
(360) 738-7273 • Facsimile: (360) 392-3936
adam@animal-lawyer.com

1 *Order on Pl's MPSJ on Damages*, ¶ 1];

2 (2) whether breach of fiduciary duty is a cognizable claim [*Order on Defs' Motion to*
3 *Dismiss*, ¶ 2]; and

4 (3) whether intrinsic value is the only appropriate measure of damages for the value of
5 Moochie [*Stipulation and Agreed Order Vacating and Revising Order on Pl's Motion*, Order ¶
6 3, modifying *Order on Pl's MPSJ on Damages*, ¶ 2].

7 Ms. Danton requests a definitive ruling on these three matters and submits supplemental
8 evidence and authority to support orders favorable to her position.

9 *Clarification*

10 Should the court permit intrinsic value as the exclusive measure, it will aid the parties to
11 know precisely what type of evidence will be allowed to prove this sum. To this end, Ms. Danton
12 asks the court to clarify what might invite widely-ranging and contradictory interpretations of
13 *Mieske*.

14 **II. Evidentiary Principles Relevant to Motions in Limine**

15 Pretrial motions to exclude evidence are designed to simplify the trial and to avoid the
16 prejudice that often occurs when a party is forced to object in front of the jury to the introduction
17 of evidence. *Fentmore v. Drake Constr.*, 87 Wn.2d 85, 89 (1976). The desirability of motions in
18 limine have been recognized by several federal jurisdictions and commentators. *See generally*
19 *United State v. Longorta*, 624 F.2d 66 (9th Cir. 1980); 21 Wright & Graham, Fed. Pract. & Proc.,
20 Evidence, § 5037, at 193-94 (1977). When a trial court is able to determine the admissibility of
21 the questioned testimony prior to its introduction at trial, it is appropriate to grant the motion in
22 limine and thereby avoid prejudice before the jury. *State v. Kelly*, 102 wn.2d 188, 192-93 (1984).

23 Guidelines for granting a motion in limine have been set forth as follows:

1 [T]he trial court should grant such a motion if it describes the evidence which is
2 sought to be excluded with sufficient specificity to enable the trial court to
3 determine that it is clearly inadmissible under the issues as drawn which may
4 develop during the trial and if the evidence is so prejudicial in its nature that the
5 moving party should be spared the necessity of calling attention to it by objecting
6 when it is offered during the trial.

7 *Fentmore*, 87 Wn.2d at 91.

8 ER 402 provides, in pertinent part, that “evidence which is not relevant is not
9 admissible.” Relevant evidence is defined by ER 401 as facts of consequence to the
10 determination of the action. ER 403 provides that “although relevant, evidence may be excluded
11 if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of
12 the issues, or misleading of the jury, or by considerations of undue delay, waste of time, or
13 needless presentation of cumulative evidence.” ER 403.

14 **III. Evidentiary Motions in Limine**

15 Based on the foregoing principles and the following analysis, Ms. Danton moves in
16 limine for the following evidentiary orders:

- 17 1. **Defendant should be precluded from stating, paraphrasing, suggesting, or**
18 **referencing the statement allegedly made by Plaintiff’s husband, Mr. Danton, to**
19 **Defendant’s administrative manager Barbara Baker, upon returning Defendant’s**
20 **call about losing Moochie, stating, “You just made me a fucking millionaire.”**

21 Defendant introduced Barbara Baker’s declaration in support of its response to Ms.
22 Danton’s motion for partial summary judgment on liability. *Barbara Baker Decl.*, ¶ 4. The
23 alleged statement of Ted Danton (“millionaire statement”) was offered for no legitimate reason
24 other than to prejudice the court. It had no bearing on liability, if only because it was allegedly
25 made hours after Moochie had escaped Defendant’s custody. This statement should be
disallowed as inadmissible hearsay, irrelevant, and unfairly prejudicial. The alleged statement is
neither germane to Ms. Danton’s damages nor her valuation of Moochie. Mr. Danton is not a
party to this case. His statement cannot come in as an admission of party opponent under ER

1 801(d)(2).

- 2
- 3 **2. Defendant should be precluded from speaking of the alleged assault on its**
4 **employees by Mr. Danton following his return from out-of-state after receiving a**
5 **call from Defendant that they had lost Moochie.**

6 No counterclaim has been raised by Defendant against Ms. Danton. Nor has a cross-claim
7 or third-party complaint been filed with respect to Mr. Danton. Although Defendant may assert
8 that Mr. Danton physically attempted to force his way into the clinic to search for Moochie,
9 purportedly to sustain an alleged civil or criminal claim, such testimony is irrelevant and unfairly
10 prejudicial. It has no bearing on liability or damages (except, perhaps, in favor of Ms. Danton,
11 speaking to the extremely high intrinsic value placed on Moochie and Ms. Danton's efforts to
12 find him immediately). No criminal charges were filed against Mr. Danton as a result of the
13 alleged interaction, and testimony in this regard should be disallowed.

- 14
- 15 **3. The Court should exclude any evidence or reference to other lawsuits, actions,**
16 **grievances, criminal actions, or potential claims involving the plaintiff or Mr.**
17 **Danton.**

18 Evidence of other lawsuits, claims, complaints or grievances against plaintiff is provided
19 as irrelevant to the present claim, misleading to the jury, and unduly prejudicial to plaintiff. ER
20 401, 403. In addition, ER 404(b) provides that "evidence of other crimes, wrongs, or acts is not
21 admissible to prove the character of a person in order to show action in conformity therewith."
22 The purpose of trial is to adjudicate the loss under its own merits, and defendant should not be
23 permitted to influence the jury by referencing or referring to other unrelated grievances,
24 complaints, claims or lawsuits.

- 25
- 26 **4. The court should exclude any reference to settlement offers, demands, negotiations,**
27 **or discussions.**

ER 408 specifically prohibits any mention of settlement offers or proposals in order to

1 prove the validity or invalidity of a claim. The reference to settlement negotiations can result in
2 an order granting a new trial after a plaintiffs' verdict in a personal injury action and upholding
3 the order on appeal. *Discargar v. Seattle*, 30 Wn.2d 461, 468 (1948). All such references should
4 be excluded.

5 **5. The Court should exclude all references to the alleged inequality of financial status**
6 **of the parties or discrepancy in income.**

7 While Defendant has insurance coverage in this matter, there is a reservation of rights
8 capping indemnification at \$2000. Defendant should be barred from appealing to the jury by
9 noting that any judgment above \$2000 will be borne by it completely, and may interfere with the
10 operations of Defendant's business. In 5 Am.Jur.2d § 881, it is declared:

11 In holding that the admission of evidence was harmless error, the courts have
12 condition their decisions upon the fact that the evidence was meaningless, of
13 trivial importance, immaterial, or without reference to the matter in controversy.
14 However, if the evidence has a tendency to arouse the sympathy or passions of the
15 jury, its admission may be reversible error despite its lack of materiality to the
16 actual issue.

17 Further, in the adaptation "counsel's appeal on civil case to wealth or poverty of litigants as
18 grounds for mistrial, new trial, or reversal," 32 A.L.R.2d 9, it is stated:

19 It appears to be well established that argument referring to the wealth or poverty
20 of a party, or contrasting the financial status of one party with that of the other, is
21 ordinarily improper, unless relevant to some issue properly in the case, the theory
22 being that jurors have a tendency to favor the poor as against the rich, and if
23 provoked by such inflammatory argument, are likely to apply the "deep pocket"
24 theory of liability, or adjust the size of the verdict to the financial ability of the
25 party used to pay it.

26 *Id.*, at 17. Washington follows these general rules. *See Nollmeyer v. Tacoma Ry. & Power Co.*,
27 95 Wash. 595 (1917); *Kramer v. Parys*, 7 Wash.App. 584 (1972); *see also Carabba v. Anacortes*
28 *Sch. Dist.*, 72 Wn.2d 939, 951 (1967)(holding improper remarks by defense counsel that a
29 plaintiffs' verdict would lead to discontinuance of sports program.)

30 PLAINTIFF'S MOTIONS IN LIMINE- 6

ANIMAL LAW OFFICES OF
ADAM P. KARP, ESQ.
114 W. Magnolia St., Ste. 425 • Bellingham, WA 98225
(360) 738-7273 • Facsimile: (360) 392-3936
adam@animal-lawyer.com

1 6. **Mr. Karp's practice.**

2 ER 401-ER 403 govern presentation of “relevant” evidence. Mr. Karp’s practice, though
3 dedicated solely to animal law, including animal welfare and animal rights, makes no “fact that
4 is of consequence to the determination of the action more probable or less probable than it would
5 be without the evidence.” ER 401. Even if relevant, referencing Mr. Karp’s practice, personal
6 values, or his website (*www.animal-lawyer.com*) would interject unfair prejudice, confuse the
7 issues, and mislead the jury. ER 403.¹

8 7. **There should be no mention of Moochie having a fair market value or replacement
9 value, or anything other than intrinsic value.**

10 On January 3, 2007, the Honorable John P. Wulle granted Ms. Danton’s motion for
11 partial summary judgment on damages in part, holding as a matter of law that Ms. Danton “may
12 present evidence of and argue for intrinsic value or something more than replacement value in
13 jury instructions and at trial.” *Stipulation and Agreed Order Vacating and Revising Order on
14 Pl’s Motion*, ¶ 3. However, ruling was reserved on whether intrinsic value would be “the only
15 appropriate measure of damages for the value of Moochie.” *Id.* The court permitted Defendant to
16 “argue that replacement value be included in the jury instructions,” but did not rule on whether
17 Defendant’s proposal would be granted. *Id.*

18 Ms. Danton refers the court to her subjoined substantive motion in limine on this issue to
19 demonstrate that intrinsic value applies as a matter of law, and the court should not only reject
20 efforts to incorporate replacement value jury instructions. Accordingly, any attempt to argue for
21 or present evidence of a putative fair market or replacement value would be wholly immaterial
22 and irrelevant and would only serve to confuse the jury. For instance, the defendant may try to

23 ¹ This concern is legitimate. In several other cases, defense counsel (other than Mr. Weigel) have cited to Mr.
24 Karp’s website and painted him as a zealot in order to sway the court.

1 introduce evidence for the proposition that a feline may be adopted from the local shelter or
2 purchased from a breeder. Defendant should be instructed not to mention Moochie being similar
3 to other cats who may be adopted at shelters or purchased through the classifieds or from pet
4 stores, or to introduce estimates of the expense of such cats. Rather, the defendants should be
5 restricted to presenting evidence and arguing for the nature and extent of Moochie's intrinsic
6 value only, as defined in the jury instructions.

7 **8. There should be no mention of attorney's fees.**

8 Whether a party has incurred attorney's fees is irrelevant to this matter. ER 401, ER 402,
9 *Lincor Contractors v. Hyskell*, 39 Wn.App. 317, 692 P.2d 903 (1984).

10 **9. There should be no mention that this motion has been filed and argued before the**
11 **court.**

12 It is respectfully requested that this Court admonish the defendant and its counsel not to
13 mention that Ms. Danton has brought these motions in limine prior to the beginning of trial.
14 Defendant's counsel should be reminded that if any prejudicial comments, arguments or
15 evidence are made before the jury, the Court will instruct the jury to disregard the same and
16 consider these motions in limine as a continuing motion for a mistrial and potential evidence in
17 support of a motion for fees and costs.

18 **10. Reservation of objections for time of trial.**

19 Ms. Danton reserves the right to object to specific testimony as it relates to specific
20 witnesses during trial.

21 **IV. Substantive Motions in Limine**

22 Based on the foregoing principles and the following analysis, Ms. Danton moves in
23 limine for the following substantive orders:

1 **11. Loss of use is a permitted element of damages in calculating intrinsic value.**

2 Ms. Danton refers the court to her prior briefing on this subject. *Pl's MPSJ on Damages*,
3 Section V(C) [pages 11-36]; *Pls' Reply on MPSJ on Damages*, Section VIII [page 7]. She adds
4 the following supplemental legal authority:

5 So long as companion animals share the legal category of personalty with their inanimate
6 counterparts, there is no justification to prevent companion animal owners from recovering loss
7 of utility damages as they would be entitled were their catamaran or Corvette totaled. *Pickford v.*
8 *Masion*, 124 Wash.App. 257 (II, 2004) does not directly control this case, if only for the reason
9 that it did not address the loss of use authority provided by *McCurdy*, *Straka Trucking*, and
10 *Holmes*. Defendant has not paid Ms. Danton for Moochie to date. Under *Straka*, therefore, she is
11 entitled to prejudgment loss of use.

12 While *Holmes* involved a reparable, damaged motor vehicle, the *Rocha* case (citing
13 *Holmes*) allowed loss of use where the plaintiff's truck was unlawfully repossessed (i.e.,
14 constructively destroyed) and he could not afford a replacement vehicle. *Rocha v. McClure*
15 *Motors, Inc.*, 64 Wn.2d 942, 947-948 (1964). Practically speaking, Ms. Danton could not just go
16 out and buy another Siamese and, instantly, put herself back in the position she was with
17 Moochie. Assuming *arguendo* that in adopting another companion Siamese, Ms. Danton could
18 substantially replicate the relationship she shared with Moochie, such an endeavor could take
19 years of daily attention, training, and monitoring of the numerously distinct nuances,
20 contingencies, and distinguishing characteristics of the new animal. This "replication process,"
21 as it were, is not conceptually different than the act of "repairing" an inanimate, damaged piece
22 of property – which is expressly allowed by *McCurdy*.

23 As stated earlier, other jurisdictions recognize loss of companionship as an element of the
24 economic value to the owner. *See, e.g., Anzalone v. Kragness*, 356 Ill.App.3d 365, 371

1 (Ill.App.Ct. 2005)(holding that loss of companionship of a pet dog is recoverable as part of the
2 “emotional increment” of such a loss, though couched as “value to the owner” rather than
3 emotional distress damages). Indeed, federal district court Judge Robart recognized that loss of
4 companionship may validly inform intrinsic value under Washington law:

5 While Plaintiffs agree that injury to their dog does not support a separate claim
6 for emotional distress or loss of companionship, they contend that a jury may
7 consider the impact on the reasonable value of their dog's companionship in
8 determining diminishment to its intrinsic value. Opp'n at 12. **It may be true
9 that a jury could consider the dog's utility (for lack of a better term) in
10 assessing its intrinsic value; such an assessment is confined by the limitation
11 on sentimental or fanciful value set forth in *Mieske*, 593 P.2d at 1311.**
12 Plaintiffs' recovery is nevertheless limited to the value of the dog itself.
13 Washington law does not permit Plaintiffs to separately recover for loss of
14 companionship or emotional harm occasioned by their dog's injury.

15 *Stephens*, 482 F.Supp. at 1286 (emphasis added).

16 **12. Intrinsic value is the measure of damages as a matter of law.**

17 Ms. Danton refers the court to her prior briefing on this subject. *Pl's MPSJ on Damages*,
18 Section V(B) [pages 3-11]; *Pls' Reply on MPSJ on Damages*, Section V-VII [pages 3-7]. She
19 adds the following supplemental legal authority:

20 *Womack's* reading of *Pickford* was confirmed by federal district court Judge Robart in
21 *Stephens v. Target Corp.*, 482 F.Supp.2d 1234 (W.D.Wash.,2007). The *Stephens* plaintiffs sued
22 for emotional harm arising from injury to the family dog. Citing *Pickford*, the court denied their
23 claim for damages under the NIED theory but recognized their right to recover intrinsic value:

24 As *Pickford* reflects, the law in Washington treats dogs the same as other chattel.
25 The court recognizes the inherent shortcomings of the law in its attempt to
compensate for the value of a beloved pet. Still, the court must work within such
confines and delineate those losses that are recoverable from those that are not.
**As the law stands, damages for injury to a pet are limited to the “actual or
intrinsic value” of damaged property. *Pickford*, 98 P.3d at 1235.**

Id., at 1236 (emphasis added).

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ANIMAL LAW OFFICES OF
ADAM P. KARP, ESQ.
114 W. Magnolia St., Ste. 425 • Bellingham, WA 98225
(360) 738-7273 • Facsimile: (360) 392-3936
adam@animal-lawyer.com

1 Not only may a plaintiff recover for the intrinsic value of a companion animal as a matter
2 of law, but she need not even allege or prove lack of market value. In *Kimball v. Betts*, 99 Wash.
3 348, 351 (1918), the Supreme Court held, “Where household goods, kept for use and not for sale,
4 have been wrongfully converted, it is not necessary to allege and prove that such goods have no
5 market value as a condition precedent to the right to introduce proof of actual value.”
6 Accordingly, Ms. Danton’s pleading no fair market value is expressly permitted by law. Besides,
7 to require her to prove a negative (i.e., no fair market value or replacement value exists) is
8 unduly burdensome, if not impossible given that a companion animal is more like an heirloom,
9 keepsake, photograph, or other item possessing intrinsic value as a matter of law. Additionally,
10 Ms. Danton has made the requisite showing. Her declaration (filed previously) clearly evidences
11 that neither she nor a person in her position would have willingly sold Moochie. Thus, there was
12 no “market value” for Moochie.

13 Should Defendants assert that the existence of numerous animal shelters, breeders, and
14 pet stores for consumers to purchase pets demonstrates that a fair market or replacement value
15 exists for Moochie, such a contention would buckle under sustained analysis. At the time of his
16 death, Moochie was over four years old. This is the relevant temporal milepost for assessing
17 value.² Breeders and pet stores sell kittens, not full-grown cats. More importantly, these entities
18 pride themselves on selling animals who have not yet imprinted on a select individual, and who
19 are *tabulae rasa* unbesmirched by bad habits, inculcated traits, or special training particular to
20 one caretaker over a lengthy period of time.

21 “For secondhand household goods and wearing apparel, the measure of damages is the
22 difference in actual value just prior to and just after the injury, and not the difference in the

23 ² *Merchant v. Peterson*, 38 Wash.App. 855 (III, 1984)(value assessed at time and place of conversion); *Harkoff v.*
24 *Whatcom Cy.*, 40 Wn.2d 147, 151 (1952)(for permanent damage, evaluate different in value just before and after
25 injury).

1 market value of similar goods at secondhand stores at or nearest their destination.” *Kimball v.*
2 *Betts*, at 351 (quoting *Galveston, H. & S.A. Ry. Co. v. Wallraven*, 160 S.W. 116
3 (Tex.Civ.App.,1913). “It seems obvious, however, that the secondhand market value, if there be
4 such, would not compensate the owner of goods which had been wrongfully converted for the
5 loss which he had sustained.” *Id.* Animal shelters cannot be properly regarded as a
6 “marketplace.” They are more akin to secondhand stores or donation stations at Value Village,
7 with the added artificial, non-market feature that they are often beneficiaries of government
8 subsidy.

9 In *Rhoades v. City of Battleground*, 115 Wash.App. 752 (II, 2003), at 766 (emphasis
10 added), the court, in examining procedural due process in light of whole species bans, states as a
11 matter of law that “the private interest involved is the owners’ interest in keeping their pets. This
12 is greater than a mere economic interest, **for pets are not fungible**. So the private interest at
13 stake is great.” “Fungible” is defined in Black’s Law Dictionary (7th ed., p. 684) as “regarded as
14 commercially interchangeable with other property of the same kind <corn and wheat are fungible
15 goods, whereas land is not>.” It is also defined as “of or pertaining to goods (e.g., coal, lumber)
16 of which any unit or part can take the place of another in meeting an order etc.” The New
17 Lexicon Webster’s Dictionary of the English Language, 1988 ed., at 384. If a companion animal
18 is not “commercially interchangeable” with another and cannot “take the place of another,” then
19 it stands to reason that there is no fair market value for such an animal, and she cannot be
20 replaced or reproduced as a matter of law.

21 *Mieske* only excludes “unusually sentimental” damages, not foreseeable sums. Simply
22 because those sums are not entirely susceptible to easy computation does not mean they should
23 be disallowed. Rather, difficulty of ascertaining damages increases the loss to the person whose
24 property has been destroyed:

25 PLAINTIFF’S MOTIONS IN LIMINE- 12

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ADAM P. KARP, ESQ.
114 W. Magnolia St., Ste. 425 • Bellingham, WA 98225
(360) 738-7273 • Facsimile: (360) 392-3936
adam@animal-lawyer.com

1
2 Necessarily the measure of damages in these circumstances is the most imprecise
3 of the three categories. Yet difficulty of assessment is not cause to deny damages
4 to a plaintiff whose property has no market value and cannot be replaced or
5 reproduced. *Jacqueline's Washington, Inc. v. Mercantile Stores Co.*, 80 Wash.2d
6 784, 498 P.2d 870 (1972); Restatement of Torts s 912 (1939).
7 **The fact that damages are difficult to ascertain and measure does not
8 diminish the loss to the person whose property has been destroyed. Indeed,
9 the very statement of the rule suggests the opposite.** If one's destroyed property
10 has a market value, presumably its equivalent is available on the market and the
11 owner can acquire that equivalent property. However, if the owner cannot acquire
12 the property in the market or by replacement or reproduction, then he simply
13 cannot be made whole.

14 *Mieske v. Bartell Drug*, 92 Wn.2d 40, 44-45 (1979) (emphasis added).

15 This doctrine articulated by the *Mieske* court finds harmony in another decision of the
16 Washington Supreme Court and the Supreme Court of New Mexico, which recognize that the
17 law should err on the side of maximizing just compensation to ensure a fair outcome. As stated
18 in *Barr v. Interbay Citizens Bank*:

19 **Exclusive of punitive damages, the measure of damages as uniformly
20 adopted by the courts and recognized by the law is exceedingly liberal
21 towards the injured party. There is nothing stinted in the rule of
22 compensation.** The party is fully compensated for all the injury done his person
23 or his property, and for all losses which he may sustain by reason of the injury, in
24 addition to recompense for physical pain, if any has been inflicted. But it does
25 not stop here; it enters the domain of feeling, tenderly inquires into his mental
sufferings, and pays him for any anguish of mind that he may have experienced.
Indignities received, insults borne, sense of shame or humiliation endured,
lacerations of feelings, disfiguration, loss of reputation or social position, loss of
honor, impairment of credit, **and every actual loss, and some which frequently
border on the imaginary, are paid for under the rule of compensatory
damages. The plaintiff is made entirely whole.**

Barr v. Interbay Citizens Bank, 96 Wn.2d 692, 700 (1981) (emphasis added). This sentiment is
echoed in a dog death case from New Mexico.

In *Wilcox v. Butt's Drug Stores*, 38 N.M. 502 (1934), Oprah Wilcox's dog Big Boy died

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ANIMAL LAW OFFICES OF
ADAM P. KARP, ESQ.
114 W. Magnolia St., Ste. 425 • Bellingham, WA 98225
(360) 738-7273 • Facsimile: (360) 392-3936
adam@animal-lawyer.com

1 from strychnine poisoning. The pharmacist dispensed an alternative to the laxative originally
2 sought but failed to disclose the risk that strychnine would present to canines. After a bench trial,
3 the court awarded \$150, and the defendant appealed. He claimed that the dog had a value no
4 greater than \$10. The court found that Big Boy, a King Charles Spaniel, was “rare in this
5 country” and possessed a value of at least \$150. *Id.*, at 979. Appellant’s challenge that the dog
6 “had no pecuniary value, and that sentimental damages are not recoverable for loss of property”
7 was rejected in part. The Supreme Court agreed that “damages for sentimental value are not
8 recoverable,” but found the defendant “incorrect in asserting that damages for the wrongful
9 destruction of a dog must be limited to market value or pecuniary value.” *Id.* It reached this
10 conclusion by analogizing dogs to household articles and wearing apparel, even those with a
11 secondhand market value, citing *Rutherford v. James*, 33 N.M. 440. *Id.* The purpose of allowing
12 this more liberal, actual value measure is to pay homage to the “paramount rule of fair and just
13 compensation” to which all “subordinate rules for the measure of damages” must yield. *Id.*

13 **13. Breach of fiduciary duty is a cognizable claim.**

14 Ms. Danton refers the court to her prior briefing on this subject. *Pl’s MPSJ on Liability*,
15 Section V(E) [pages 8-12]; *Pls’ Reply on MPSJ on Liability*, Section V [pages 7-9]; *Pl’s*
16 *Opposition to Def’s MTD*, Section V(C and D) [pages 4-9]. She adds the following supplemental
17 legal authority:

18 The relationship of mutual trust and confidence requires the physician to fully inform the
19 patient of his or her condition, to avoid patient abandonment, to refer to specialists as necessary,
20 and to obtain informed consent. 61 Am.Jur.2d § 167, at 299; 70 C.J.S. § 58, at 448-49. Indeed,
21 the Veterinary Board of Governors has recognized the existence of the veterinarian as fiduciary
22 by regulatory language:

23 **Honesty, integrity and fair dealing.** A veterinarian's practice shall be conducted

1 on the **highest plane of honesty, integrity and fair dealing** with clients in **time**
2 **and services rendered**, and in the **amount charged** for services, facilities,
3 appliances and drugs. It is unprofessional and unethical for a veterinarian to
4 attempt to mislead or deceive a client or to make untruthful statements or
5 representations to a client. It is also unprofessional and unethical for a
6 veterinarian to attempt to dissuade a client from filing a disciplinary complaint
7 by, but not limited to, a liability release, waiver, or written agreement, wherein
8 the client assumes all risk or releases the veterinarian from liability for any harm,
9 damage, or injury to an animal while under the care, custody, or treatment by the
10 veterinarian.³

11 WAC 246-933-080 (emphasis added). The highlighted language echoes traditional fiduciary
12 duties. The California Court of Appeals also recognized the fiduciary relationship in the
13 veterinary context:

14 Certainly the fact that a veterinarian takes his clients' animals, pets often as
15 deeply revered as members of the family, puts him in a position of a bailee for
16 hire and a fiduciary as far as the care and protection of this personalty is
17 concerned. In handling this property of his clients, he owes a deep and abiding
18 obligation of honesty and integrity as to his treatment and their care.

19 *Thorpe v. Bd. of Examiners in Veterinary Medicine*, 104 Cal.App.3d 111, 117 (1980).

20 During oral argument, the court wanted additional evidence of a bona fide veterinary
21 medical dimension to the care of Moochie over the period in their care. **Exhibits 1-3** to this
22 motion support the claim that Moochie was under frequent monitoring by veterinary
23 professionals, thereby strengthening the assertion that a fiduciary relationship existed.

24 1. Defendant routinely advertises “Veterinarian Supervised Boarding.” **Exhibit 1.**

25 2. Defendant’s boarding flow sheets include daily monitoring of vital health conditions,
along with requirements that employees notify veterinarians on duty as to changes in a patient’s
status. **Exhibit 2.**

³ Indeed, such a practice is against public policy for human health care providers. *Vodopest v. MacGregor*, 128 Wn.2d 840, 861-62 (1996).

1 testimony that is indubitably emotive, speak to her distress in losing him, and offer features of
2 sentimentality, they are completely descriptive of Moochie’s characteristics and uses. People
3 who bond with companion animals expect such a sentimental characterization as within the
4 normal limits of human-animal experience, not the unusual or excessive sentimentality that
5 *Mieske* prohibits. Furthermore, not all animals become instant companions. Nor is their potential
6 fully harnessed or expressed. Some revert to a wild or dysfunctional state, while others never
7 receive training or love, resulting in value stagnation. Abandoned, neglected, and abused
8 animals, in being regarded by their owners no differently than trash, have a negligible or non-
9 existent intrinsic value. Ms. Danton did not treat Moochie this way. Rather, she maximized the
10 value of Moochie through her labor and attention, and her recovery should not be restricted to
11 the value ascertained by some unknown individual as if he were combing a flea market for
12 bargains. A jury can decide what is within normal limits for this type of personalty. To espouse
13 these views with respect to a file cabinet, for instance, would normally be excessive, but not for a
14 companion animal.

15 Ms. Danton seeks clarification from the court to know whether she can testify to the
16 relationship she shared with Moochie, her interactions, loving moments, and care for Moochie
17 from time of adoption to the manner in which she searched, and continues to search, for
18 Moochie. The difficulty with not clarifying the motion in limine regarding intrinsic value is that
19 without more guidance, a straightforward ruling that “Moochie had an intrinsic value as a matter
20 of law” lacks specificity and creates several traps during live testimony. Defendant may consider
21 any testimony beyond species, age, health, and coloration to be "excessively sentimental.”

22 VI. Conclusion

23 Ms. Danton respectfully requests that her motions in limine and request for clarification
24 be granted and addressed as stated above. A proposed order is attached as **Exhibit A**.

25 PLAINTIFF’S MOTIONS IN LIMINE- 17

ANIMAL LAW OFFICES OF
ADAM P. KARP, ESQ.
114 W. Magnolia St., Ste. 425 • Bellingham, WA 98225
(360) 738-7273 • Facsimile: (360) 392-3936
adam@animal-lawyer.com

Respectfully submitted this July 10, 2007

ANIMAL LAW OFFICES

/s/ Adam P. Karp

Adam P. Karp, WSBA #28622
Attorney for Plaintiff

DECLARATION OF ADAM P. KARP

1. I am the attorney of record for the plaintiff in the above-captioned action.
2. The attached exhibits are true copies of the purported documents:
 - a. **Exhibit 1** – Response to Plaintiff’s Third Discovery Requests (RFP No. 3).
 - b. **Exhibit 2** – Response to Plaintiff’s Third Discovery Requests (RFP No. 1)
 - c. **Exhibit 3** – Redacted portion from Deposition of Michael Baker, and Exhibit 1 subjoined.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed this July 10, 2007.

ANIMAL LAW OFFICES

By: **/s/ Adam P. Karp**

Adam P. Karp, WSBA 28622

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 10, 2007, I caused a true and correct copy of the foregoing to be served upon the following person(s) in the following manner:

[x] U.S. Mail, First Class, Postage Prepaid

PLAINTIFF’S MOTIONS IN LIMINE- 18

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adam@animal-lawyer.com

- 1 [] U.S. Mail, Certified, Return Receipt Requested
- 2 [x] **Email (by agreement of defense counsel)**
- 3 [] Express Mail
- 4 [] Hand Delivery/Legal Messenger
- 5 [] Facsimile Transmission
- 6 [] Federal Express/Airborne Express/UPS Overnight
- 7 [] Personal Delivery

8 Douglas K. Weigel
9 Floyd & Pflueger
10 2505 3rd Ave., Ste. 300
11 Seattle, WA 98121
12 (206) 441-4455
13 F: (206) 441-8484
14 dweigel@floyd-pflueger.com

15 **/s/ Adam P. Karp**
16 Adam P. Karp, WSB No. 28622
17 Attorney for Plaintiff

EXHIBIT 1

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

MARILYN DANTON,

Plaintiff,

vs.

ST. FRANCIS 24 HOUR ANIMAL
HOSPITAL, P.C. a Washington professional
services corporation (UBI 602-029-072); and
DOES 1-10;

Defendants.

Case No.: 06-2-01172-8

PLAINTIFF'S THIRD DISCOVERY
REQUESTS

WITH RESPONSES THERETO

ORIGINAL

TO: ST. FRANCIS 24 HOUR ANIMAL HOSPITAL, P.C., Defendant,
AND TO: DOUGLAS WEIGEL, its attorney of record.

Please respond to each of the following discovery requests separately and fully under oath within thirty days of the date of service and return the original to this office. Type responses in the spaces provided, adding pages if additional space is required. These are interrogatories, and requests for production served upon you in accordance with CR 26.

Interrogatories. These interrogatories are continuing to the extent required by CR 26(e). Upon request, a Word 2003 version of this document will be provided. If information is not available within the time limits of the Civil Rules, you must answer each interrogatory as fully as possible within the time limit and furnish additional information when it becomes available. If there are any additions, deletions or changes in the answers or information provided at any time prior to trial, you are specifically requested to immediately so inform the plaintiff. If additional

PLAINTIFF'S THIRD DISCOVERY
REQUESTS - 1

ANIMAL LAW OFFICES OF
ADAM P. KARP, ESQ.

114 W. Magnolia St., Ste. 425 • Bellingham, WA 98225
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adam@animal-lawyer.com

ORIGINAL

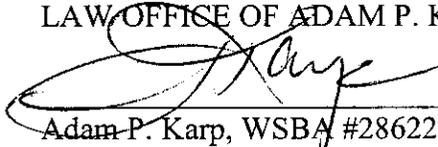
1 information is discovered between the time of making these answers and the time of trial, these
2 interrogatories are directed to that information. If such information is not seasonably furnished
3 within a reasonable time prior to time of trial, the undersigned will move at trial to exclude from
4 evidence any information known to or in the possession of said party or parties, their attorneys,
5 their liability insurers, and their attorneys' and liability insurers' agents. These answers and
6 objections, if any, must be served within thirty (30) days after service of this request for
7 admissions.

8 **Requests for Production.** These are also requests for production served upon you in
9 accordance with CR 26. These requests are directed to the above named party or parties and to
10 their attorneys, and extend to all documents in the possession of said party or parties, their
11 attorneys, their liability insurers, and their attorneys' and liability insurers' agents. It is requested
12 that documents responsive to these requests be produced for inspection and copying at the offices
13 of plaintiff's attorney within thirty (30) days of receipt, or such other time to which the parties
14 mutually agree.

15 **Objections.** If objection is made to any interrogatory or request for production, you must
16 set forth in detail pursuant to the Civil Rules the reason and basis for the objection, including a
17 privilege log setting forth (1) the creator of the document; (2) in whose position the document
18 currently exists; (3) and all facts sufficient to establish the foundation for creating said document.

19 DATED at Bellingham, Washington, this April 25, 2007.

20 LAW OFFICE OF ADAM P. KARP

21 
22 Adam P. Karp, WSBA #28622
23 Attorney for Plaintiff

24 **Plaintiff incorporates by reference the Definitions and Prefatory Sections from the First
25 Discovery Requests.**

26 **REQUEST FOR PRODUCTION NO. 1:** Please produce all of St. Francis 24 Hour Animal
27 Hospital's written protocols or policies from January 1, 2000 to date concerning notification of a
28 veterinarian on staff by a veterinary technician or veterinary assistant with respect to boarded
29 animals and observations of their condition. Such conditions include, but are not limited to, all
30 factors identified on each Boarding Flow Chart (e.g., V/D/U, LOC, food and water, TPR, CRT,
31 mm).

32 **RESPONSE:** All responsive documents in Defendants' custody
33 and control are attached hereto.

34 PLAINTIFF'S THIRD DISCOVERY
35 REQUESTS - 2

ANIMAL LAW OFFICES OF
ADAM P. KARP, ESQ.
114 W. Magnolia St., Ste. 425 • Bellingham, WA 98225
(360) 738-7273 • Facsimile: (360) 392-3936
adam@animal-lawyer.com

1
2 **REQUEST FOR PRODUCTION NO. 2:** Please produce all monthly reception and technician
3 reports from January 1, 2000 to date. These reports were identified by Dr. Baker during his
4 deposition in this case.

5
6 **RESPONSE:** All responsive documents in Defendants' custody and
7 control are attached hereto.

8
9 **REQUEST FOR PRODUCTION NO. 3:** Please produce copies of all advertisements for St.
10 Francis 24 Hour Animal Hospital, from January 1, 2000 to date, regardless of medium or format
11 (e.g., web, newspaper, TV, radio, yellow pages).

12
13 **RESPONSE:** All responsive documents in Defendants' custody and
14 control are attached hereto.

15
16 **REQUEST FOR PRODUCTION NO. 4:** Please produce all St. Francis 24 Hour Animal
17 Hospital written protocols or policies from January 1, 2000 to date concerning "pull checks" on
18 cages and any other safeguards or failsafes to ensure that boarded animals or patients would not
19 escape from their cages.

20
21 **RESPONSE:** Defendants are unaware of any documents responsive to
22 this request.

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END OF THIRD DISCOVERY REQUESTS

ATTORNEY'S CR 26 CERTIFICATION

The undersigned attorney certifies that he or she has read each response and objection to these discovery requests, and that to the best of his or her knowledge, information, and belief formed after a reasonable inquiry, each is (1) consistent with the Civil Rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the costs of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

**PLAINTIFF'S THIRD DISCOVERY
REQUESTS - 3**

ANIMAL LAW OFFICES OF
ADAM P. KARP, ESQ.
114 W. Magnolia St., Ste. 425 • Bellingham, WA 98225
(360) 738-7273 • Facsimile: (360) 392-3936
adam@animal-lawyer.com

1 DATED at SEATTLE, Washington, this 1st day of JUNE, ²⁰⁰⁷~~2006~~.

2
3 FLOYD & PFLUEGER

4 By: DKW.D
5 Douglas Weigel, WSB No. 27192
6 Of Attorneys for Defendants

7 **VERIFICATION**

8 I declare under penalty of perjury under the laws of the State of Washington that I have
9 read the foregoing responses to Plaintiff's Third Discovery Requests, know the contents thereof,
10 and believe them to be true and correct.

11 DATED at _____, Washington, this ____ day of _____, 2006.

12 ST. FRANCIS 24 HOUR ANIMAL HOSPITAL, P.C.

13 By: _____

14 **CERTIFICATE OF SERVICE**

15 I HEREBY CERTIFY that on April 25, 2007, I caused a true and correct copy of the foregoing to
16 be served upon the following person(s) in the following manner:

- 17 [x] U.S. Mail, First Class, Postage Prepaid
18 [] U.S. Mail, Certified, Return Receipt Requested
19 [x] **Email (by agreement of defense counsel)**
20 [] Express Mail
21 [] Hand Delivery/Legal Messenger
22 [] Facsimile Transmission
23 [] Federal Express/Airborne Express/UPS Overnight
24 [] Personal Delivery

25 Doug Weigel
Floyd & Pflueger

PLAINTIFF'S THIRD DISCOVERY
REQUESTS - 4

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(360) 738-7273 • Facsimile: (360) 392-3936
adam@animal-lawyer.com

REQUEST NO. 1

Treatment Sheets

Treatment sheets are to be initialed by the person crossing the treatment off and taking responsibility for treatment having been done and all information recorded. Initialing your treatments allows the DVM to easily find out any additional information about patient or the treatments, if needed.

Treatment sheets have columns for every hour of the day. Most treatments are scheduled for 4-hour intervals at 3am, 7am, 11am, 3pm, 7pm, and 11pm. However, you must be aware that a treatment can be scheduled at anytime if the DVM feels it is necessary.

☑ = Kitty-corner line denotes that the treatment or feeding or monitoring is to be done at that time.

— = Horizontal line denotes that the treatment has not been done. This needs to be initialed by the DVM authorizing that the treatment does not need to be done. No one but the DVM on duty can authorize that a treatment not be done. The technician/assistant can put down the DVM's initials if requested by the DVM.

☒ = This denotes that the treatment has been completed and recorded.

All treatments need to be completed, recorded, initialed, and commented on if needed. If this is not done the DVM on duty must be notified and authorize the change.

All changes in the patient (positive or negative) or continuation/repetition of problems must be recorded and brought to the attention of the DVM on duty. Any bloodwork completed must be given to the DVM as soon as possible.

All times that treatments are done or notes that are made must include am or pm. No military time please.

Treatment sheets are where the DVM's record and communicate the specific orders for each patient. Treatment sheets are where technicians and assistants receive the information and the specific times that these are to be done.

Treatments sheets are the basis of communication from DVM to DVM, from DVM to staff and from shift to shift.

Treatment sheets are the flow charts that aid in following a patient's response to treatment.

Treatment sheets are legal documents.

DVM's on duty must be notified in person to changes in a patient's status.

DVM's on duty must be notified in person to any continuation of problems.

(i.e. if a dog comes in for diarrhea and has multiple diarrhea bouts, the DVM needs to be made aware of the frequency.)

DVM's on duty must be notified when requested lab results are completed and in record.

LOC = Level of Consciousness

BAR = Bright, alert, and responsive.

Aware and interactive with surroundings,
Normal appetite, attitude, and activity

QAR = Quiet, alert, and responsive.

Aware of surroundings, interacts with encouragement
Decreased appetite, activity, and eliminations.

DULL = Aware of surroundings but uninterested

Lackluster, lethargic, responds to mild/moderate stimulation.

STUPOR = On and off awareness of surroundings,

Responds to moderate stimulation, both physical and auditory
Responds to both superficial and deep pain.

COMATOSE = Unaware of surroundings and stimulation.

V = Vomiting

Each and every time a patient vomits, it is to be recorded and DVM on duty must be notified. Written comments are to include: volume, contents, what it may have been associated with (feeding, meds, activity).

D = Defecation

Each and every time a patient defecates, it is to be recorded. Any abnormalities (straining, cowpie, blood, mucous, etc.) needs to be brought to the attention of the DVM on duty.

All felines should have litterpans unless specifically noted by DVM. They should be cleaned every time they are soiled.

U = Urination

Each and every time a patient urinates, it is to be recorded. Any abnormalities (straining, color change, increase or decrease in volume), needs to be brought to the attention of the DVM on duty.

All felines should have litterpans unless specifically noted by DVM and should be cleaned whenever it is noted that it is soiled.

All wet towels/cages should be cleaned immediately.

T = Temperature

Any change above or below normal must be brought to attention of DVM on duty and noted in chart.

P = Pulse or HR

Any changes above or below normals must be reported to DVM.
Any pulse deficits must be reported to DVM and recorded.

Large canines = 80-120, small canines = 90-130, felines = 160-180

R = Respiration

Any changes above or below normals (20-40/min) must be brought
To the DVM's attention and recorded.

Any changes in pattern or depth, level of distress, must be recorded
Be brought to the attention and recorded.

MM = Mucous Membranes

Any change in color or increase/decrease in capillary refill
Time of more than one second, any bruising/bleeding must
Be recorded and DVM notified.

WT = Weight

Any changes above or below 10% of admit weight requires that the
DVM be notified.

Animals weighed on the white baby scale need to have weight
converted from ounces to pounds. There is a conversion chart on
the left hand side of the scale.

Newborn pups and kittens, and small exotics should be weighed on
the gram scale found in exam room 2. Lid needs to be on for
accurate weight.

If an exotic is too large to fit in gram scale, it may be weighed on
other scales. Weight should then be converted to grams.

Every animal in the hospital must be weighed a minimum of once
a day and it must be recorded.

Food Type

The type and amount and frequency requested by DVM or owner.
If a variety is requested by DVM, a small amount of one new type
at a time is to offered and a written comment as to which type
offered, amount, whether it was warmed or water added.

Hospital dry already opened in back, baby food, misc. brands
(friskies, Kal Kan, etc.) do not need to be checked out on food list.
All other types of food opened for a patient will need to be written
on list found on cabinet in the general ward. Include brand, type
(canine or feline), canned or dry, and size.

Any opened can should have a date on it before going into fridge.
Only cans that have been charged to the client or brought from
home should be labeled with patient's first and last name. This
signifies that can or bag is not for general hospital use.

Appetite/H2O Any increase or decrease in amounts must be recorded and DVM on duty notified.

Walk Always record each and every elimination that you see. Any abnormalities in ability to defecate or urinate or willingness to walk should also be noted and DVM notified.

If the DVM requests additional treatments, they will write them down. This may include Blood pressure, EKG, check incision, note pain. Blocked toms are commonly monitored for urine volume, color, and debris.

Crossing orders off only shows that they may have been done but they require notations and/or descriptions. There are un-labeled boxes on the bottom right of the treatment sheets. BP, serial blood glucose, and hematocrits, etc. may go here.

PLR = Pupillary Light Response Pupil's ability to dilate and constrict with light. Direct and indirect responses for both right and left Pupils should be recorded and DVM notified of Abnormalities.

Menace Blink response to object moving toward face without touching animal. Helps gauge ability to see.

Nystagmus Involuntary, rapid movement of the eyes when head is still.

BP = Blood Pressure Any changes above or below normal (100-130) must be brought to attention of DVM on duty.

Pain Signs may include increase in heartrate or respiration, decrease in Appetite or activity level, changes in attitude, vocalization, etc.

Incision Monitor for swelling, discharge, redness, bruising, licking, any Disruption of suture line.

E. Collars To be placed if animal is bothering incision or acknowledge that One is not needed. A SFAH collar should be used for in-house use only. If they e-collar will go home with the animal, the DVM must be made aware of it so the client may be charged.

Labwork All labwork, when completed, must be given to the DVM on duty Immediately and then placed in the record.

Fluids

This order will include the type of fluids, any additives and rate. All of this and the liter number and volume received needs to be Recorded. Any changes to the fluids or type or rate need to be Recorded. Any discrepancies must be brought to attention of DVM on duty.

EXHIBIT 2

REQUEST NO. 3

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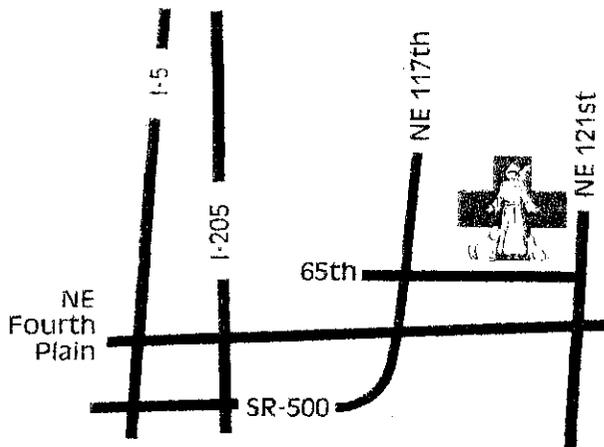
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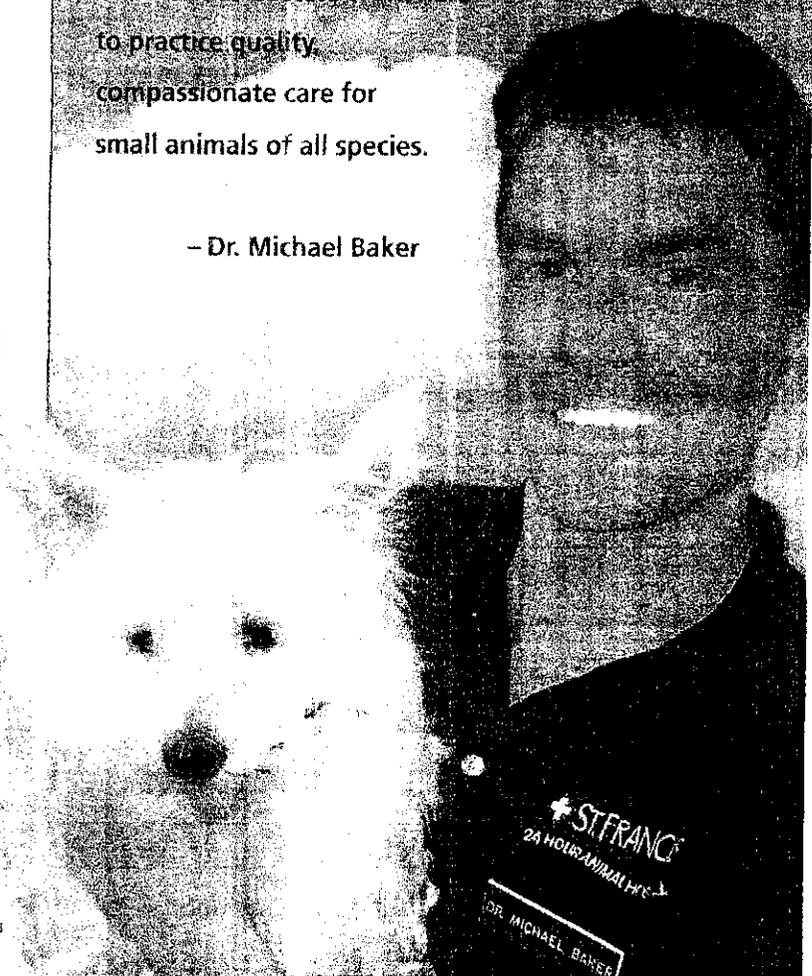
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— Dr. Michael Baker



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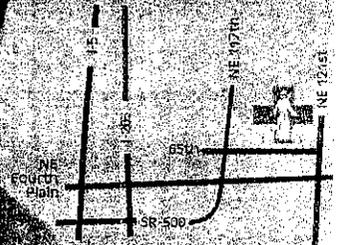


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ave escaped, she said. "I searched every nook and cranny," she said. "No dog." According to Joe Zarelli: Mostly the only people that new the couple had paid

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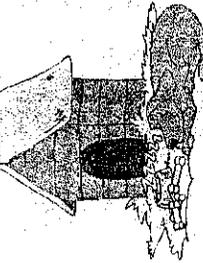
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this is politically motivated. That's what's more concerning to me. Why would someone take her? I don't know the

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enjoys. He likes to head butt and interact with his human. He gets along well with other cats and has been known to give little love bugs. He would be best in an adult home. Has

Sierra is a 1 yr. old, domestic, short-haired, spayed female, who has gray/white feet and big. She weighs about 6 lbs. and has had an outdoor life. She gets along well with other cats and would accept a cat-friendly dog. She likes a lap, playing with toys and purring into your ears. She would like to be indoors.

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the Animals will take place Sat., May 6, 10:30 a.m., at Esther Short Park in Vancouver. Sponsored by the Humane Society for Southwest Washington, the Walk raises funds for the animal shelter.

"One hundred percent of the money goes to the shelter," said Sara Detmering, special events coordinator.

Last year, 1,500 people, 760 dogs, a turtle and two ponies participated in the walk, Detmering said.

Participants may either donate directly or collect pledges from friends, she said. There is no minimum fee to participate.

Prizes are awarded for differ-

walkers I \$155 each. Registrants at the walk will choose a walk at River.

For information contact Humane Society



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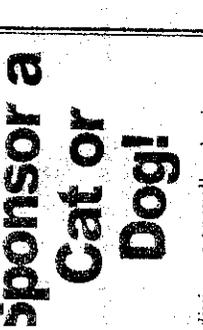
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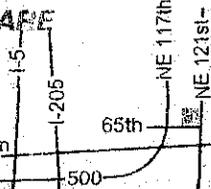
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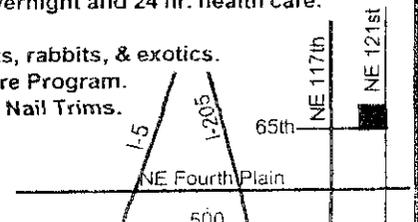
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ave.,
and fish,
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of birds
Mrs. Sac.,
i. books,
2121.
s. 202 E
so Plaza,
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E Main
917 NE
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131 NE

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W Main St., Battle Ground, 687-3141.
Amazia Veterinary Service, small animals, horses and farm
animals, 24 hour large animal emergency service, 12301 NE

ing, 9801 NE 219th St., Battle Ground, 637-7151.
Cascade Park Animal Hospital, 16490 SE McGillevray
Blvd., Vancouver, 892-2122.
Cats House Calls, medical, vaccinations, genetic care,
260-7981.
Clark County Emergency Veterinary Service, 5818 E
Fourth Plain Blvd., Vancouver, 694-3007.
Claus Paves Animal Hospital, 6700 NE 162nd Ave., suite
420, Vancouver, 896-7420.
Columbia Veterinary Center, reptiles, dogs, cats, 5106 NE
78th St., Hazel Dell, 694-6514.
Companion Pet Clinic, 11516 SE Mill Plain Blvd., Cascade
Park, 254-8811 OR 800 Tenney Rd., Suite 101, Salmon Creek,
546-0055.
Cook, Michael N., DVM, 230 Davidson Ave., Woodland,
725-9469.
Countryside Veterinary Service, horses, 2601 NE 259th St.,
Ridgefield, 24-hour emergency service, 887-7814.
Equine Veterinary Service, serving Clark County horse
community since 1976, 750-6633, 1-800-254-3403.
Evergreen Animal Hospital, 1710 NE 78th St., Hazel Dell,
574-6247.
Felida Pet Hospital, 12610 NW 36th Ave., Vancouver, 571-
8755.
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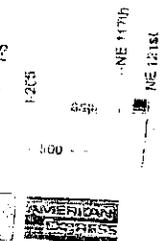
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Cost Camera Ready - \$111.38

EXHIBIT 3

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

MARILYN DANTON,)	
)	
Plaintiff,)	
)	
vs.)	No. 06-2-01172-8
)	(Wulle)
ST. FRANCIS 24 HOUR ANIMAL)	
HOSPITAL, P.C., a)	
Washington professional)	
services corporation (UBI)	
602-029-072); and DOES)	
1-10,)	
)	
Defendants.)	
)	

DEPOSITION OF
MICHAEL L. BAKER, DVM
Taken in behalf of Plaintiff

* * *

January 19, 2007

207 E. 19th Street

Vancouver, Washington

Janette M. Schmitt, CSR, RPR
Court Reporter

Schmitt & Lehmann, Inc.
(360) 695-5554 ** (503) 223-4040

Page 2

1 APPEARANCES:
 2 For the Plaintiff: MR. ADAM P. KARP
 Attorney at Law
 Suite 425
 114 West Magnolia Street
 Bellingham, WA 98225
 4 For the Defendants: MR. MARSHALL L. FERGUSON
 Attorney at Law
 300 Trianon Building
 2505 Third Avenue
 Seattle, WA 98121
 8 Also Present: (None)
 9

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Mr. Karp	3 - 63

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Page 4

1 Have you been deposed before?
 2 A. No.
 3 Q. No?
 4 A. No.
 5 Q. Everything that's being said is taken down
 6 by Ms. Schmitt, so it's important that we create a
 7 clear record by doing a number of things: one,
 8 trying not to talk over one another; two,
 9 verbalizing, as a yes or no, certain head gestures;
 10 and three, making sure that when you answer a
 11 question, that you're answering a question that you
 12 fully understand.
 13 I'm going to assume that if you don't ask me
 14 to clarify my question, that you've understood every
 15 part of the question that I've posed to you.
 16 A. Okay.
 17 Q. Okay. Do you have any questions before we
 18 start?
 19 A. No.
 20 Q. What documents have you reviewed to prepare
 21 for today's deposition?
 22 A. None.
 23 Q. With whom have you spoken to prepare for
 24 today's deposition?
 25 A. I've spoken with Marshall --

Page 3

1 VANCOUVER, WASHINGTON; FRIDAY, JANUARY 19, 2007
 2 2:00 p.m.
 3 * * *
 4 MICHAEL L. BAKER, DVM
 5 called as a witness in behalf of the Plaintiff,
 6 having first been sworn by the Notary,
 7 testifies as follows:
 8 MR. FERGUSON: I would like to actually open
 9 the record by stating an objection. This deposition
 10 was noted as a 30(b)(6) along with a list of topics
 11 that were to be covered during the deposition. My
 12 understanding is that today counsel will be
 13 interrogating my client about matters that go beyond
 14 the scope of the 30(b)(6) notice.
 15 Although I am lodging this objection for
 16 practical reasons I would not instruct Dr. Baker not
 17 to answer the questions that go beyond the scope of
 18 the 30(b)(6). But I am, nonetheless, posting this
 19 objection.
 20 MR. KARP: Thank you.
 21 EXAMINATION
 22 BY MR. KARP:
 23 Q. Mr. Baker as -- I'm sorry, Dr. Baker, as
 24 indicated, my name is Adam Karp. I represent Marilyn
 25 Danton in the case against St. Francis.

Page 5

1 Q. Okay.
 2 A. -- concerning a deposition.
 3 Q. Okay. Anyone else?
 4 A. No.
 5 Q. I'd like to begin by asking you about
 6 certain protocols concerning the care of boarded
 7 animals at St. Francis. And I'd like to start by
 8 referencing an exhibit. And we can use Exhibit 2.
 9 This is also Exhibit 2 to the deposition of
 10 Ms. Pickard and Mrs. Arionus. And we can identify
 11 this as -- let's see.
 12 MR. FERGUSON: Do you want to just leave it
 13 as Pickard Arionus and refer to it as that? Or do
 14 you want to make it a deposition exhibit to this
 15 deposition as well?
 16 MR. KARP: Let's call this Exhibit 1 to this
 17 deposition.
 18 (Deposition Exhibit Number 1 marked for
 19 identification.)
 20 Q. (By Mr. Karp) Okay. I'm showing you what's
 21 been marked as Exhibit 1 to your deposition. And I'd
 22 like you to take a look at page three of this exhibit
 23 and let me know if you recognize that document.
 24 MR. FERGUSON: Review it and take as much
 25 time as you need.

Page 6

1 THE WITNESS: That would be a boarding sheet
 2 for boarded animals.
 3 Q. (By Mr. Karp) Is this a standard sheet used
 4 for boarded animals?
 5 A. Uh-huh.
 6 Q. That's a yes?
 7 A. Yes.
 8 Q. I see here that under schedule, in the first
 9 matrix, there's a row that references the terms
 10 walk/litter, water, LOC, V/D/U, activity and
 11 appetite. LOC refers to level of consciousness?
 12 A. Yes.
 13 Q. And V-D-U refers to vomit, defecation and
 14 urination?
 15 A. Uh-huh.
 16 Q. And then the next row, beginning with number
 17 three, TPR, weight, mm, and then it's whited-out, but
 18 I assume that's CRT?
 19 A. Uh-huh.
 20 Q. Can you identify those variables?
 21 A. Yes.
 22 Q. And what are these?
 23 A. Temperature/pulse rate, weight, mucous
 24 membranes, capillary refill time.
 25 Q. Does R refer to respiratory rate?

Page 7

1 A. Yeah, respiration.
 2 Q. Okay. Now, it appears here that according
 3 to the boarding schedule, these variables are checked
 4 routinely throughout a day; is that correct?
 5 A. Yes, where they're marked.
 6 Q. Okay. What is the protocol for St. Francis
 7 with regard to an employee who has been assigned with
 8 the task of checking food and water consumption if
 9 the animal has not eaten or had water over a certain
 10 period of time?
 11 MR. FERGUSON: Object to form.
 12 Go ahead.
 13 THE WITNESS: Can you rephrase that?
 14 Q. (By Mr. Karp) I'll rephrase it. Assume
 15 that an employee has been instructed to check the
 16 level of food -- whether the animal has eaten or had
 17 anything to drink at a certain time in the day, so
 18 assume that.
 19 Is there any protocol in place for such an
 20 employee to notify a veterinarian on staff if there's
 21 an indication that the animal hasn't eaten or had
 22 water for a lengthy period of time?
 23 A. Yes.
 24 Q. Okay.
 25 A. There's a written protocol.

Page 8

1 MR. KARP: Okay. I'll just note for the
 2 record that I want to get a copy of that protocol.
 3 And I can submit a formal request for that too.
 4 Q. (By Mr. Karp) Can you describe to me,
 5 though, the precise nature of that protocol?
 6 A. If the animal doesn't eat in a 24-hour
 7 period, they are to let the overnight doctor know.
 8 Q. What about water, what does the protocol say
 9 concerning water consumption?
 10 A. It would be similar, but it's harder to note
 11 volume of water. So it would be unlikely that we
 12 would have a situation where the animal's not
 13 drinking and it's probably more done on appetite,
 14 so...
 15 Q. Okay. Is it conceivable, though, that if an
 16 animal has not had water for more than two or three
 17 days, that that would be something for a veterinarian
 18 on staff to be notified about by a kennel staff
 19 worker or technician?
 20 A. If the animal hadn't drank for two or three
 21 days?
 22 Q. Yes, that's correct.
 23 A. Yes.
 24 Q. Is there a protocol in place that concerns
 25 the level of consciousness of an animal in terms of

Page 9

1 whether an employee should notify a veterinarian on
 2 staff?
 3 A. Any animal in the hospital that's not BAR or
 4 QAR, which is bright, alert, and responsive, quiet,
 5 alert and responsive, if they're sedated at all, they
 6 notify their doctor.
 7 Q. And this is for both boarded animals and
 8 patients of the clinic?
 9 A. Yes.
 10 Q. Is there a protocol in place concerning
 11 vomiting should it -- in other words, should an
 12 employee notify a veterinarian on staff if they
 13 notice vomiting by the animal that's boarded?
 14 MR. FERGUSON: Objection, incomplete
 15 hypothetical.
 16 Go ahead.
 17 THE WITNESS: Yeah, I think our protocol --
 18 I don't know if it identifies every single aspect,
 19 but the idea is that if there is something abnormal
 20 during the day that they let their overnight doctor
 21 know.
 22 So I don't know how detailed that protocol
 23 is about vomiting, versus diarrhea, versus urinating
 24 frequently. The idea is that if it's an abnormal,
 25 not a normal situation, they let the overnight doctor

Page 10

1 know.
 2 Q. (By Mr. Karp) They, being kennel
 3 technicians?
 4 A. Yeah, anybody in the hospital.
 5 Q. Okay. Not having the written protocol in
 6 front of us, can you give me your best recollection
 7 of what those abnormal conditions might be to the
 8 extent they're actually listed on that document? I
 9 mean, is there anything specific that's listed
 10 saying --
 11 A. I don't know. I don't know without it in
 12 front of me. But it would be if it was abnormal.
 13 Q. Okay. Did you have any role in preparing
 14 that protocol?
 15 A. Yes.
 16 Q. Did anyone else?
 17 A. Probably.
 18 Q. Do you remember who?
 19 A. Not without looking at it, no.
 20 Q. So the names of the people who participated
 21 in preparing the protocol would be listed on the
 22 document?
 23 A. Not always.
 24 Q. Okay. How would you identify other people
 25 who assisted in preparing it?

Page 11

1 A. Sometimes it's noted, sometimes it's not.
 2 It depends on the date in which it was done. We
 3 routinely change our protocols, so a date is put on
 4 it.
 5 Q. Okay. How long has this protocol that we've
 6 been describing, that is the protocol on notifying a
 7 veterinarian on staff if there's an abnormal
 8 condition during a -- during a check on a boarded
 9 animal, how long has such a protocol been in place at
 10 your clinic?
 11 A. Since day one I've asked the employees to
 12 let their doctors know if there's anything abnormal.
 13 Q. What is day one? I don't know when
 14 St. Francis opened.
 15 A. August 22nd, 2000, probably --
 16 Q. Is that when --
 17 A. -- or close to it.
 18 Q. I'm sorry. So August of 2000 is the date
 19 that the clinic opened for all purposes, or just for
 20 boarding?
 21 A. All purposes.
 22 Q. Just to bring us full circle. If an
 23 employee notices that temperature, heart rate,
 24 respiratory rate, mucous membranes, or capillary
 25 refill time are abnormal, it's the protocol of the

Page 12

1 clinic or that employee to notify a veterinarian on
 2 staff?
 3 MR. FERGUSON: Object to the form.
 4 Compound.
 5 THE WITNESS: Can you rephrase it?
 6 Q. (By Mr. Karp) Sure. Under the schedule
 7 here under bullet number three, the variables that
 8 you've defined, is it the protocol at St. Francis for
 9 an employee to notify a veterinarian immediately if
 10 they notice anything abnormal with respect to any of
 11 those variables?
 12 A. Yes. If they're abnormal, they let their
 13 overnight doctor know.
 14 Q. During a time that an animal is boarded, is
 15 there a licensed veterinary technician overseeing the
 16 care of that animal at all times?
 17 MR. FERGUSON: Object to the form.
 18 Go ahead.
 19 THE WITNESS: You're asking if there is a
 20 veterinarian technician licensed at all times in the
 21 clinic?
 22 Q. (By Mr. Karp) No. Okay. So assume that a
 23 client brings in an animal to be boarded for a week,
 24 over that week period, is that animal being
 25 supervised -- is that animal's care being supervised

Page 13

1 directly or indirectly by a veterinary technician at
 2 all times?
 3 A. It's being supervised by a doctor.
 4 Q. And that goes for animals that are just
 5 boarded at the facility?
 6 A. Yep.
 7 MR. FERGUSON: Object to the form.
 8 (Deposition Exhibit Number 2 marked for
 9 identification.)
 10 Q. (By Mr. Karp) Okay. I'm showing you,
 11 Dr. Baker, what has been marked as Exhibit 2.
 12 I'd like you to take a second to review it
 13 and let me know if you've seen it and then we can
 14 discuss it.
 15 I will indicate that a page from this letter
 16 has been removed, and that is the reference to the
 17 correspondence from the Department of Health.
 18 Aside from that one page, have you seen the
 19 rest of this document before?
 20 A. Yes.
 21 Q. Okay. Is everything on this page, bullets
 22 one through five, accurate as you sit here to --
 23 A. To the best of my knowledge.
 24 Q. Okay. I'd like you to look at page three of
 25 this exhibit.

Admit Date: 9/23/05

BOARDING

Admit Time: 8:00 P Discharge Date: 10/01/05

Client: Danton Pet: Maachie

Problem/Services Needed: _____

Food: own food prep area _____

Personal Belongings: carrier • leash • toys • blanket
Tan

medication • other: _____

St. Francis 24 Hour Animal Hospital
24 HOUR BOARDING FLOW SHEET
 Date 9/24/05 M Tu W Th F (Sa) Su Day# 2

Admit Date 9/23/05 Discharge Date 10/1/05

1. BOARDING
2.
3.

4.
5.
6.

DOCTORS: MB, MJ, AS TECHNICIANS: EB, JFCM, VM, MA, MW, AS, JST

DEFAULT ORDERS q6h: Walk, LOC, V-D-U, Activity, Feed, Water, Appetite q24h: Weigh, TPR, mmCRT, pulses

SCHEDULE	M	1	2	3	4	5	6	7	8	9	10	11	N	1	2	3	4	5	6	7	8	9	10	11	
1. Food 1/2c HOSP						X													X						
2. Walk/Litter, Water, LOC, V/D/U Activity, Appetite						X						X							X						X
3. TPR, Weight, mm, CRT												X													

TIME	TEMP	HR	RR	mm	CRT	LOC	V/D/U	EATING	DRINK
5:55A						BAR	---	+	+
11:20A	100.5	200	55	pmc	sk	OP	---	+	+
5:10P						OP	---	+	+
10:15P						BAR	---	+	+

CEM
CEM
MA

Comments:

WEIGHT: ADMIT 15.1# TODAY 14.8 1/05
 CLIENT DANTON PET MOOLIE

BE SURE BELONGINGS GO HOME
AP
DISCHARGE

St. Francis 24 Hour Animal Hospital
24 HOUR BOARDING FLOW SHEET
 Date 9-25-5 M Tu W Th F Sa Su Day# 3

Admit Date 9-23-5 Discharge Date 10-1-5

1.
2.
3.

4.
5.
6.

DOCTORS: M-SAC MS PD TECHNICIANS: BUN JIG MAR JG SC UM

DEFAULT ORDERS q6h: Walk, LOC, V-D-U, Activity, Feed, Water, Appetite q24h: Weigh, TPR, mm, CRT, pulses

SCHEDULE	M	1	2	3	4	5	6	7	8	9	10	11	N	1	2	3	4	5	6	7	8	9	10	11
1. Food <u>1/2 scoop</u>						✓												✓						
2. Walk/Litter, Water, LOC, V/D/U Activity, Appetite						✓						✓						✓						✓
3. TPR, Weight, mm, CRT						✓						✓												

TIME	TEMP	HR	RR	mm	CRT	LOC	V/D/U	EATING	DRINK
<u>9:40a</u>						<u>QH</u>	<u>---</u>	<u>+</u>	<u>+</u>
<u>12:25p</u>	<u>99.7</u>	<u>200</u>	<u>50/hr</u>	<u>pk</u>	<u>1sec</u>	<u>BAP</u>	<u>---</u>	<u>-</u>	<u>-</u>
<u>4:55p</u>						<u>BAP</u>	<u>---</u>	<u>-</u>	<u>-</u>
<u>10:50p</u>						<u>BAP</u>	<u>---</u>	<u>-</u>	<u>-</u>

Comments:

vm No New food added 4:55p

WEIGHT: ADMIT 15.1# TODAY 14.9#

CLIENT Danton PET Moochie

BE SURE BELONGINGS GO HOME

AP

DISCHARGE

St. Francis 24 Hour Animal Hospital
24 HOUR BOARDING FLOW SHEET
 Date 9-26-5 (M) Tu W Th F Sa Su Day# 4

Admit Date 9-23-5 Discharge Date 10-1-5

1.
2.
3.

4.
5.
6.

DOCTORS: MBACMSD TECHNICIANS: BMW CFT IG 56 sch Tu

DEFAULT ORDERS q6h: Walk, LOC, V-D-U, Activity, Feed, Water, Appetite q24h: Weigh, TPR, mmCRT, pulses

SCHEDULE	M	1	2	3	4	5	6	7	8	9	10	11	N	1	2	3	4	5	6	7	8	9	10	11
1. Food <u>Vac loop</u>						X												X						
2. Walk/Litter, Water, LOC, V/D/U Activity, Appetite						X					X							X						X
3. TPR, Weight, mm, CRT												X												

BE SURE BELONGINGS GO HOME

AP

* JIG
 UH
 VV
 JIG

TIME	TEMP	HR	RR	mm	CRT	LOC	V/D/U	EATING	DRINK
5:14A		180				BAR	---	—	—
6:10AM	180.6	180	60	PR	1 sec	BAR	---	—	—
4:45P						BAR	---	—	—
11:00P						BAR	---	—	—

Comments:

* No new food added 4:45p UM

WEIGHT: ADMIT 15.1 TODAY 14.8

CLIENT Danton PET Moodie

DISCHARGE

St. Francis 24 Hour Animal Hospital
24 HOUR BOARDING FLOW SHEET

Date 9-27-05 M 10 W Th F Sa Su Day# 5

Admit Date 9-23-05 Discharge Date 10-1-05

1.
2.
3.

4.
5.
6.

DOCTORS: MB, MS, PD, AL TECHNICIANS: JB, MW, JIG, SC, CF, TG, VM, KT

DEFAULT ORDERS q6h: Walk, LOC, V-D-U, Activity, Feed, Water, Appetite q24h: Weigh, TPR, mm, CRT, pulses

SCHEDULE	M	1	2	3	4	5	6	7	8	9	10	11	N	1	2	3	4	5	6	7	8	9	10	11
1. Food <u>per hosp</u>						X												X						
2. Walk/Litter, Water, LOC, V/D/U Activity, Appetite						X						X						X						X
3. TPR, Weight, mm, CRT												X												

	TIME	TEMP	HR	RR	mm	CRT	LOC	V/D/U	EATING	DRINK
JIG	3:51A						BAR	---	+	+
CA	9:57A	99.7	120	50	PK	1 sec	BAR	---	+	+
CA	4:51P						BAR	---	+	+
JIG	4:30P						BAR	---	+	+

Comments: _____

WEIGHT: ADMIT 15.1 # TODAY 15.3 #

CLIENT Damon PET Moochie

BE SURE BELONGINGS GO HOME

AP

DISCHARGE

St. Francis 24 Hour Animal Hospital
24 HOUR BOARDING FLOW SHEET
 Date 9/28/05 M Tu **W** Th F Sa Su Day# 6

Admit Date 9-23-05 Discharge Date 10-1-05

1.
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DOCTORS: MB, AC, MS, PD TECHNICIANS: TB, MMA, CF, JST, SC, KT, JG, MN, JIG

DEFAULT ORDERS q6h: Walk, LOC, V-D-U, Activity, Feed, Water, Appetite q24h: Weigh, TPR, mmCRT, pulses

SCHEDULE	M	1	2	3	4	5	6	7	8	9	10	11	N	1	2	3	4	5	6	7	8	9	10	11
1. Food <u>1/2 c hosp</u>						X												X						
2. Walk/Litter, Water, LOC, V/D/U Activity, Appetite						X						X						X						X
3. TPR, Weight, mm, CRT												X												

	TIME	TEMP	HR	RR	mm	CRT	LOC	V/D/U	EATING	DRINK
JIG	5:47A						BAR	---	-	SLT
cat	10:45	100.9	120	40	PK	15cc	BAR	---	-	-
cat	5:03P						BAR	---	+	+
JIG	10:19P						BAR	---	+	+

Comments:

WEIGHT: ADMIT 15.1 # TODAY 15.7 #

CLIENT Danton PET Moachie

BE SURE BELONGINGS GO HOME AP DISCHARGE

EXHIBIT A

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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK**

MARILYN DANTON,

Plaintiff,

vs.

ST. FRANCIS 24 HOUR ANIMAL
HOSPITAL, P.C. a Washington professional
services corporation (UBI 602-029-072); and
DOES 1-10;

Defendants.

Case No.: 06-2-01172-8 (Wulle)

**[proposed] ORDER GRANTING
PLAINTIFF'S MOTIONS IN LIMINE**

Clerk's Action Required

This matter came before the Court on Plaintiff's motions in limine. The Court heard oral argument from all parties and considered the pleadings filed herein.

The Court finds good cause to order the following relief. IT IS HEREBY ORDERED THAT:

1. Plaintiff's motion is GRANTED.
2. Having reserved ruling on the issues of loss of use, intrinsic value, and breach of fiduciary duty, the court orders the following:

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTIONS IN LIMINE - 1**

ANIMAL LAW OFFICES OF
ADAM P. KARP, ESQ.
114 W. Magnolia St., Ste. 425 • Bellingham, WA 98225
(360) 738-7273 • Facsimile: (360) 392-3936
adam@animal-lawyer.com

1 a. The Plaintiff may recover damages for loss of use, Plaintiff's motion for
2 partial summary judgment on this aspect of damages, heard on August 25,
3 2006, is GRANTED, and Defendant's motion to dismiss this aspect of
4 damages, also heard on August 25, 2006, is DENIED WITH PREJUDICE.

5 b. Moochie had an intrinsic value as a matter of law, not a fair market or
6 replacement value, and Plaintiff's motion for partial summary judgment on
7 this aspect of damages, heard on August 25, 2006, is GRANTED.

8 c. Breach of fiduciary duty is a cognizable claim, and Defendant's motion to
9 dismiss this claim, heard on August 25, 2006, is DENIED WITH
10 PREJUDICE.
11

12 3. To assist with defining the contours of what evidence will be admissible to inform the
13 jury in determining an intrinsic value, the court clarifies its order as follows:

14 _____
15 _____
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21 _____

22 4. The defendant and its attorneys shall instruct any witnesses they call not to introduce
23 evidence concerning, refer to, interrogate concerning, or attempt to convey to the jury

1 in any manner the following:

- 2 • Communicating the alleged statement of Mr. Danton to Barbara Baker, “You just
- 3 made me a fucking millionaire,” or any statement paraphrasing, suggesting, or
- 4 referencing the same type of comment.
- 5 • Communicating any alleged physical assault by Mr. Danton on any employee of
- 6 St. Francis upon his and his wife’s return from out-of-state.
- 7 • Other lawsuits, grievances, claims involving Ms. Danton or Mr. Danton.
- 8 • Settlement negotiations or offers of compromise.
- 9 • Alleged disparate financial status or poverty of defendant predicated on lack of
- 10 insurance coverage.
- 11 • The nature of Mr. Karp’s practice, his affiliation or support of animal welfare,
- 12 animal rights, or animal causes generally, his website, his personal or professional
- 13 life generally.
- 14 • The assertion that Moochie had a fair market or replacement value, or anything
- 15 other than intrinsic value.
- 16 • Any reference to or suggestion that the parties have incurred attorney’s fees in
- 17 pursuing or defending this action.
- 18 • The filing of this motion.

19 Dated this July 10, 2007.

20

The Honorable John P. Wulle
Clark County Superior Court Judge

21 Presented by:

22 ANIMAL LAW OFFICES

23

[PROPOSED] ORDER GRANTING
24 **PLAINTIFF’S MOTIONS IN LIMINE - 3**

25 ANIMAL LAW OFFICES OF
ADAM P. KARP, ESQ.
114 W. Magnolia St., Ste. 425 • Bellingham, WA 98225
(360) 738-7273 • Facsimile: (360) 392-3936
adam@animal-lawyer.com

1 Adam P. Karp, WSB No. 28622
Attorney for Plaintiff

2 Approved as to Form:

3 FLOYD & PFLUEGER, PS

4 _____
5 Douglas K. Weigel, WSB No. 27192
Attorney for Defendant

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24 **[PROPOSED] ORDER GRANTING**
PLAINTIFF'S MOTIONS IN LIMINE - 4

ANIMAL LAW OFFICES OF
ADAM P. KARP, ESQ.
114 W. Magnolia St., Ste. 425 • Bellingham, WA 98225
(360) 738-7273 • Facsimile: (360) 392-3936
adam@animal-lawyer.com